



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE
4949-A Cox Road, Glen Allen, Virginia 23060
(804) 527-5020 FAX (804) 527-5106
www.deq.virginia.gov

Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director
(804) 698-4000

James Golden
Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
BEACHFRONT GROUP, LLC
FOR**

**EXXON 8 0809-1340 (Facility ID No. 7002368),
MARKET EXPRESS 15 (Facility ID No. 4018989), & RED BARN FOOD
STORE (Facility ID No. 5011251)**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and BeachFront Group, LLC, for the purpose of resolving certain violations of the State Water Control Law and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Beachfront" means BeachFront Group, LLC, a limited liability company authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Beachfront Group is a "person" who owns and operates the Facilities.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

2021 APR 9 AM 11:09:10

4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Facilities" means the following physical locations where the UST and/or UST system is installed and/or operated:
 - a. "Exxon 8," known as Exxon 8 0809-1340, located at 216 South Broad Street in Lunenburg County, Virginia. The Facility's UST and/or UST system are owned by BeachFront Group, LLC, and the Facility is further identified by UST Facility ID# 7002368; and
 - b. "Market Express," known as Market Express 15, located at 200 County Drive in Sussex County, Virginia. The Facility's UST and/or UST system are owned by BeachFront Group, LLC, and the Facility is further identified by UST Facility ID# 4018989.
 - c. "Red Barn," known as Red Barn Food Store, located at 13300 Warwick Boulevard in Newport News, Virginia. The Facility's UST and/or UST system are owned by Beachfront Group, LLC, and the Facility is further identified by UST Facility ID# 5011251.
6. "Financial Responsibility" means the ability to demonstrate that one has the financial resources available to pay for the costs of containment and cleanup and third party lawsuits in the event of a release from an UST or UST system in accordance with 9 VAC 25-590-40, -50.
7. "Form 7530-2" means the Notification for Underground Storage Tanks form used by DEQ to register and track USTs for proper operation, closure and ownership, in accordance with 9 VAC 25-580-70.
8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
9. "Operator" means any person in control of, or having responsibility for, the daily operation of the UST system as defined in Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.
10. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
11. "Owner" means any person who owns an UST system used for storage, use, or dispensing of regulated substances as defined in Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.
12. "Person" means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, association, any state or agency thereof,

municipality, county, town, commission, political subdivision of a state, any interstate body, consortium, joint venture, commercial entity, the government of the United States or any unit or agency thereof.

13. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
14. "Regulated Substance" means an element, compound, mixture, solution or substance that, when released into the environment, may present substantial danger to the public health or welfare, or the environment, as defined in Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.
15. "Regulations" means the Underground Storage Tanks: Technical Standards and Corrective Action Requirements, 9 VAC 25-580-10 *et seq.*, and the Petroleum Underground Storage Tank Financial Responsibility Requirements, 9 VAC 25-590-10 *et seq.*
16. "Release detection" means determining whether a release of a regulated substance has occurred from the UST system into the environment or into the interstitial space between the UST system and its secondary barrier or secondary containment around it.
17. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 9 (Va. Code §§ 62.1-44.34:8 through 62.1-44.34:9) of the State Water Control Law addresses Storage Tanks.
18. "Underground Storage Tank" or "UST" means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10% or more beneath the surface of the ground as defined in Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.
19. "Va. Code" means the Code of Virginia (1950), as amended.
20. "VAC" means the Virginia Administrative Code.
21. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. Beachfront Group is the owner and operator of Exxon 8, Market Express, and Red Barn (collectively the "Facilities"). Beachfront Group stores a regulated substance in the form of gasoline, kerosene, and diesel in USTs at the Facilities.
2. At all times relevant to this Order, there were five USTs at Exxon 8: one 8,000 gallon gasoline UST ("T #8"); one 8,000 gallon gasoline UST ("T #9"); one 8,000 gallon

gasoline UST ("T #10"); one 8,000 gallon diesel UST ("T #11"); and one 4,000 gallon kerosene UST ("T #12").

3. At all times relevant to this Order, there were five USTs at Market Express: one 12,000 gallon gasoline UST ("T #1"); one 12,000 gallon gasoline UST ("T #2"); one 12,000 gallon on-road diesel UST ("T #3"); one 4,000 gallon kerosene UST ("T #4"); and one 3,000 gallon off-road diesel UST ("T #5").
4. At all times relevant to this Order, there were five USTs at Red Barn: one 10,000 gallon gasoline UST ("T #1"); one 10,000 gallon gasoline UST ("T #2"); one 10,000 gallon gasoline UST ("T #3"); one 10,000 gallon diesel UST ("T #4"); and one 4,000 gallon kerosene UST ("T #5").

Violations Common to the Exxon 8, Market Express, and Red Barn Facilities

5. On April 1, 2019, Department staff from the Office of Financial Responsibility and Waste Programs conducted a file review to evaluate Beachfront Group's compliance with the requirements of the State Water Control Law and the Regulations. At the time of this review, DEQ was aware of Beachfront Group's ownership only of Exxon 8 and Market Express. DEQ staff observed the following:
 - a. Financial responsibility had not been demonstrated based on review of the current documentation on file with DEQ.
6. 9 VAC 25-590-40(A) requires that owners or operators of petroleum underground storage tanks shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks.
7. 9 VAC 25-590-50 requires that an owner or operator demonstrate financial responsibility using either self-insurance under limited circumstances or a combination of mechanisms listed in 9 VAC 25-590-60 through -110.
8. Department staff mailed a Deficiency Letter on April 1, 2019 and a Warning Letter (WL No. 19-10-CO-013) on October 30, 2019 to Beachfront Group for the violations listed in Paragraph 4(a) above. The WL requested that Beachfront Group respond in writing within twenty (20) days. Beachfront Group did not respond to the WL within the requested time. No NOV was issued based on the observation described above. The violations were, however, referred for enforcement to be consolidated with those violations listed in the Notice of Violation No. TPRO254796 described below.
9. On June 30, 2020, DEQ staff met by phone with the owner of Beachfront Group and discussed the violations listed in Paragraph 5(a). At that time, Beachfront Group informed DEQ that it was in the process of determining whether it had a financial assurance mechanism in place through its insurance policy. Subsequent correspondence among Beachfront Group, bank representatives, and DEQ revealed that Beachfront

Group had not had a financial assurance mechanism in place, but that it had undertaken efforts to meet financial responsibility requirements shortly after the telephonic meeting on June 30, 2020.

10. On September 2, 2020, DEQ received information that Beachfront Group had also owned Red Barn since 2017 but had no financial assurance mechanism in place for the facility. This was subsequently confirmed by Beachfront Group.
11. On November 5, 2020, DEQ confirmed by letter that Beachfront Group resolved all outstanding financial responsibility deficiencies for the Facilities.

Violations at the Exxon 8 Facility

12. On December 19, 2018, Department staff from PRO's Petroleum Program inspected Exxon 8 to evaluate Beachfront Group's compliance with the requirements of the State Water Control Law and Regulations. DEQ staff observed, in relevant part, the following:
 - a. Tank release detection records for T #8, T #9, T #10, T #11, and T #12 were not provided.
 - b. Automatic line leak detector tests for the underground piping associated with T #8, T #9, T #10, and T #12 were not provided.
 - c. Annual line tightness tests for the underground piping associated with T #8, T #9, T #10, and T #12 were not provided.
 - d. No registration forms were completed by the current owner listing itself as the owner of the USTs.
 - e. No operator training certificate or documentation for the Class A, B, or C operators was provided.
13. As a result, the Department issued a Request for Compliance Activity on January 7, 2019 and a Warning Letter (WL No. TPRO 244516) on July 8, 2019.
14. On September 9, 2019, the violation described in Paragraph 12(e) was resolved.
15. On November 6, 2019, and Notice of Violation No. TPRO254796 ("NOV") was issued for the deficiencies listed in Paragraph 12(a)-(d) above. However, subsequent investigation revealed that the observations in Paragraph 12(b) and (c) above had been resolved prior to the issuance of the NOV when Beachfront Group submitted automatic line leak detector and line tightness tests in October of 2019 for testing conducted on August 13, 2019. Nonetheless, observations described in Paragraph 12(a) and (d) above remained outstanding.

16. 9 VAC 25-580-130 requires that owners and operators must provide a method, or combination of methods, of release detection that can detect a release from any portion of the tank and the connected underground piping that routinely contains product.
17. 9 VAC 25-580-120 requires that owners and operators keep records of the facility's compliance with tank release detection requirements either "at the UST site and immediately available for inspection . . . [or] at a readily available alternative site and be provided for inspection to the board upon request."
18. 9 VAC 25-580-70 requires that owners submit a notification form for any change in ownership, tank status, tank/piping systems, or substance stored within thirty (30) days after such change occurs.
19. In response to the NOV, DEQ and Beachfront Group met by phone on June 30, 2020 to discuss the violations. Thereafter, Beachfront Group submitted monthly printouts showing passing tank release detection records and the proper notification form for Exxon 8. The violations described in Paragraphs 12(a) and (d) were thus corrected.
20. Based on the results of the December 19, 2018 inspection, the April 1, 2019 file review, the June 30, 2020 meeting, and the subsequent disclosures by Beachfront Group, the Board concludes that Beachfront Group has violated 9 VAC 25-580-120(3), 9 VAC 25-580-70, 9 VAC 25-590-40(A), and 9 VAC 25-590-50, as described in the above paragraphs.
21. As of the date of this Order, no further corrective action is required.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Beachfront Group, and Beachfront Group agrees to:

1. Pay a civil charge of \$7,691.80 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Beachfront Group shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Petroleum Storage Tank Fund (VPSTF).

If the Department has to refer collection of moneys due under this Order to the Department of Law, Beachfront Group shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Beachfront Group for good cause shown by Beachfront Group, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order, NOV No. TPRO24576 dated November 6, 2019, Warning Letter No. WL No. 19-10-CO-013 dated April 1, 2019, and Warning Letter No. TPRO 244516 dated January 7, 2019. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Beachfront Group admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Beachfront Group consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Beachfront Group declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Beachfront Group to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Beachfront Group shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Beachfront Group shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence

on its part. Beachfront Group shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Beachfront Group. Nevertheless, Beachfront Group agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Beachfront Group has completed all of the requirements of the Order;
 - b. Beachfront Group petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Beachfront Group.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Beachfront Group from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Beachfront Group and approved by the Department pursuant to this Order are incorporated into this

Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of Beachfront Group certifies that he or she is a responsible official or officer authorized to enter into the terms and conditions of this Order and to execute and legally bind Beachfront Group to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Beachfront Group.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Beachfront Group voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2020.

James J. Golden, Regional Director
Department of Environmental Quality

------(Remainder of Page Intentionally Blank)-----

Beachfront Group, LLC voluntarily agrees to the issuance of this Order.

Date: 4/6/21 By: Nikhil Patel, OWNER
(Person) (Title)
Beachfront Group, LLC

Commonwealth of Virginia

City/County of Virginia Beach

The foregoing document was signed and acknowledged before me this 6 day of
April, 2021, by Nikhil Patel who is
owner of Beachfront Group, LLC, on behalf of the company.

Pamela Wadsworth Cunningham
Notary Public
322099
Registration No.

My commission expires: 12-31-2022

Notary seal:



PAMELA WADSWORTH CUNNINGHAM
NOTARY PUBLIC
REG. #322099
COMMONWEALTH OF VIRGINIA

MY COMMISSION EXPIRES DECEMBER 31, 2022